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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. 837

AUGUST SORCEY,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

JAMES C. LEATON,
Attorney for Petitioner.

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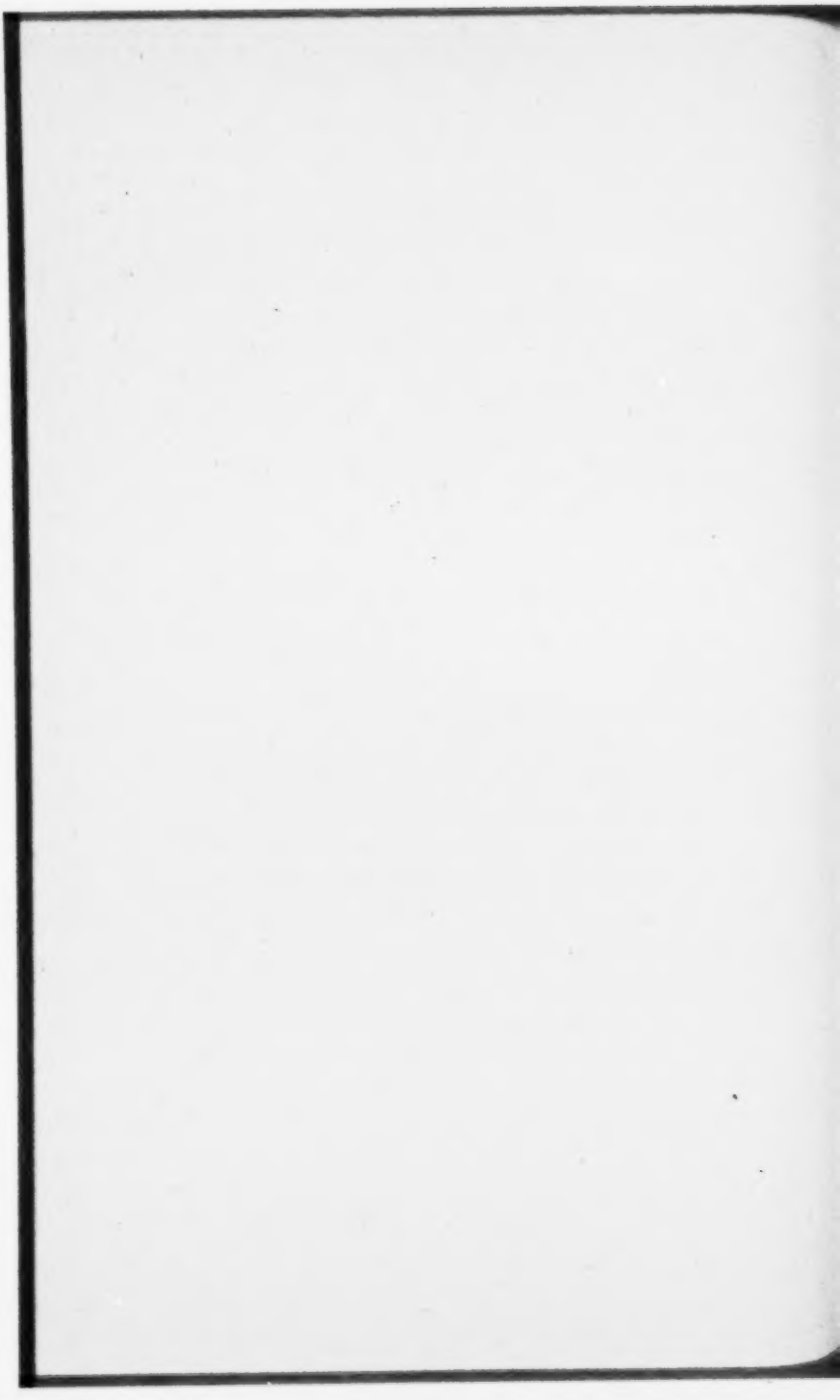

INDEX.

	PAGE
Petition for Writ of Certiorari	1
Summary Statement of the Matter Involved	2
The Basis of Juridsiction	3
The Questions Presented	3
Reasons Relied on For Allowance of the Writ	4
Prayer for Writ	4
Brief in Support of Petition	5
Jurisdiction	5
Statement of the Case	5
Summary of Argument	6
Argument:	
Excessive Punishment Was Inflicted While the Court Was Inflamed at Counsel	7
An Exhaustive Examination of the Bailiff Should Have Been Permitted	8
It Was Error to Introduce the Affidavits of Jurors	9
The Sentence Imposed, Together With the Withdrawing of the Offer to Reduce It, Indicates That the Petitioner is Being Punished For the Acts of His Counsel	11
Conclusion	14

TABLE OF CASES.

Fillippon v. Albion Vein Slate Co., 250 U. S. 76, at 81-82 11
Lindsay v. U. S., 133 Fed. (2nd) 368, at 369 12
Little v. U. S., 73 Fed. (2nd) 861, at 866 10
Mattox v. U. S., 146 U. S. 140, at 149-150 10
Wheaton v. U. S., 133 Fed. (2nd) 522, at 526 11

OPINION IN COURT BELOW.

Sorcey v. U. S., 151 Fed. (2nd) 899 5

STATUTES.

Section 264, Title 18, U. S. C. A. 1
Section 265, Title 18, U. S. C. A. 1
Section 268, Title 18, U. S. C. A. 1
Section 294, Title 18, U. S. C. A. 1
Section 347 (a), Title 28, U. S. C. A. 3

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PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your Petitioner, August Sorcey, by James C. Leaton, his attorney, respectfully submits this petition for a Writ of Certiorari to review a judgment of the United States Circuit Court of Appeals for the Seventh Circuit affirming his conviction in the United States District Court for the Eastern Division of Wisconsin under an indictment charging the possession and sale of counterfeit currency and conspiracy so to do in violation of Sections 264, 265, 268 and 294 of Title 18, U.S.C.A.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

Petitioner was indicted (R. 1) under the above-mentioned Sections of the Statute, together with Martin King, Dominick Anthony Rizzo, Anthony Cicerello and Sebastian Vermiglio. All defendants except Vermiglio were convicted, and Petitioner was sentenced (R. 336) to serve seven years in the penitentiary on each of three substantive counts and two years on a conspiracy count; all sentences to run concurrently. King was given probation; the other two defendants, two and three years in the penitentiary (R. 338).

The record discloses (R. 327) that in an effort to obtain a new trial, the Court Bailiff who was in charge of the jury was called as a witness by Mr. Sullivan, then counsel for Petitioner, and questioned with regard to a conversation with certain jurors during their deliberations. He was permitted by the Court to testify as to what he had told various members of the jury, but the Court refused to permit him to testify as to any statements of the jurors to him (R. 328). The Court thereupon imposed the sentences indicated.

Following the affirmance by the Circuit Court of Appeals of the conviction, the Court (R. 395) indicated a willingness to reduce the sentence of Petitioner from seven to five years, but later refused to do so (R. 394).

Involved are: (1) the denial of the right of the defendant to examine exhaustively the witness Stielow, and (2) the abuse of discretion by the Court in originally sentencing Petitioner to an excessive sentence measured by the others imposed by reason of (a) anger at the then counsel

for Petitioner because he called Stielow, the Court's Bailiff, as a witness, and (b) because after admitting that the sentence was excessive under the circumstances and promising a reduction of two years, the Court refused such reduction because of the acts of the present counsel for Petitioner.

THE BASIS OF JURISDICTION.

The judgment of the Circuit Court of Appeals was entered November 17, 1945 (R. 382). A petition for rehearing was filed within the time allowed by the rules of court (R. 383) and was denied December 7, 1945 (R. 383). A second petition for rehearing, based on newly discovered evidence, was filed in apt time (R. 390) and was denied January 10, 1946 (R. 399).

Jurisdiction is invoked under Section 347 (a) of Title 28, U.S.C.A.

THE QUESTIONS PRESENTED.

(1) Whether the denial of the right to examine the witness Stielow was reversible error.

(2) Whether the Court abused its discretionary powers in adding to the punishment imposed on Petitioner because of the acts of his counsel.

(3) Whether it was error to introduce the affidavits of jurors to prove that no improper influence was brought upon them.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

(1) The imposition of sentence in whole or in part upon Petitioner by reason of the acts of his counsel was a violation of the rights guaranteed to him under the Constitution, and the sanctioning of this departure from lawful procedure by the Circuit Court of Appeals calls for the exercise of this Court's supervisory powers.

(2) The refusal of the trial court to permit exhaustive examination of a person who had talked to jurors during their deliberations was prejudicial error, and the sanctioning of this procedure by the Circuit Court, likewise, calls for the exercise of the supervisory powers of this Court.

WHEREFORE, your Petitioner prays that a Writ of Certiorari issue under the seal of this Court directed to the Circuit Court of Appeals for the Seventh Circuit, commanding said Court to certify to this Court a complete record of the proceedings of the said Circuit Court had in the case entitled, "*United States of America, Plaintiff-Appellee*, v. *August Sorcey, Defendant-Appellant*," No. 8848, to the end that this cause may be reviewed and that the judgment of said Circuit Court may be reversed, and for such further relief as to this Court may seem proper.

Respectfully submitted,

AUGUST SORCEY,

By JAMES C. LEATON,

His Attorney.